IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.5672 of 2020
and
W.M.P.No.6608 of 2020

M.Durairaj ... Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road, Chennai.

2.The Deputy Inspector General of Registration,
Guindy, Chennai – 32.

3.The District Collector,
Chennai South,
Guindy Industrial Estate,
Guindy, Chennai – 32.

4.The Sub Registrar,
Pammal, Chennai – 75. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in his proceedings in Na.Ka.No.4882/Aa1/2019 dated 15.11.2019 and quash the same and thereby direct the fourth respondent to complete the registration of the Exchange Cancellation Deed dated 02.05.2019 without insisting for any additional stamp duty and deliver the same forthwith to the petitioner.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.P.Anandakumar
Government Advocate

ORDER

This Writ Petition has been filed seeking for issuance of a certiorarified mandamus, to call for the records of the third respondent in his proceedings in Na.Ka.No.4882/Aa1/2019 dated 15.11.2019 and quash the same and thereby direct the fourth respondent to complete the registration of the Exchange Cancellation Deed dated 02.05.2019 without insisting for any additional stamp duty and deliver the same forthwith to the petitioner.

2. The case of the petitioner is that the petitioner and one B.Kalpesh jointly executed an Exchange Deed on 20.09.2014 in respect of the properties in Pammal Village, Chennai and the same was registered as Doc.No.7831/2014. The parties did not act upon the Exchange Deed Doc.No.7831/2014. The petitioner and the said B.Kalpesh executed Cancellation of the Exchange Deed on 02.05.2019 and the same was presented before the fourth respondent. The Cancellation of Exchange Deed was kept as pending Doc.No.P89/2019/Pammal. The fourth respondent has collected huge stamp duty and registration charges in respect of subsequent Exchange Deed registered under Doc.No.5339/2019. As per Article 17 of the Indian Stamp Act, 1899,

only Rs.50/- as stamp duty is to be collected for Cancellation Deed from the parties. Without jurisdiction, the third respondent has passed the impugned order dated 15.11.2019 and demanded huge stamp duty as conveyance for cancellation for the Exchange Deed. Hence, challenging the impugned order dated 15.11.2019 passed by the third respondent, the petitioner has approached this Court by way of filing the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the petitioner exchanged his property of 412 sq.ft., to one B.Kalpesh. He further submitted that the petitioner and the said B.Kalpesh jointly executed an Exchange Deed on 20.09.2014 in respect of their properties in Pammal Village, Chennai under which, the petitioner exchanged his property of 412 sq.ft., to the said B.Kalpesh and he exchanged 719 sq.ft., of his property to the petitioner. The said property was registered as Doc.No.7831/2014 on the file of the Sub Registrar, Pammal, Chennai the fourth respondent herein. It is further submitted that the parties did not act according to the Exchange Deed. Hence, the petitioner and the said B.Kalpesh both executed cancellation of Exchange Deed on 02.05.2019 and the same was presented for registration before the fourth respondent herein. The said document was registered but unfortunately it was kept as pending Doc.No.P89/2019/Pammal. The said Cancellation Deed

bears appropriate stamp duty.

4. Learned counsel appearing for the petitioner submitted as per the provisions of Article 17 of the Indian Stamp Act instrument of cancellation (including any instrument by which any instrument previously cancelled) in existence provisions cancelled) if attested and not otherwise provided for the stamp duty is only Rs.50/- and the fourth respondent cannot sit over and thereby interpret as though the same should be treated as conveyance. He further submitted that when the parties wanted to treat a particular document to be cancelled, it is their wish and for the purpose of cancellation, the respondents cannot treat the document again as one more conveyance and demanded stamp duty for the said document.

5. As a matter of fact, a subsequent Exchange Deed came into existence on 01.07.2019 under Doc.No.5339/2019 registered in the Office of fourth respondent and the Exchange Deed was also registered so that the parties will be put to previous position and under the subsequent Exchange Deed, huge stamp duty and the registration fee totalling Rs.2,25,110/- was collected from the petitioner.

6. The impugned order passed by the third respondent is without jurisdiction and he has no jurisdiction under Section 31 of the Indian Stamp Act, 1899, to levy stamp duty and demand stamp duty from the parties.

7. As per Section 31 of the Indian Stamp Act, 1899 that too in respect of documents relating to conveyance etc., it is only the Collector who can discharge his duties under the provision and not the third respondent herein. The third respondent cannot adjudicate as to proper stamp duty in respect of any document. Hence, the impugned order passed by the third respondent is totally illegal and without jurisdiction. The third respondent has passed the impugned order as though the Exchange Deed is yet another conveyance and hence further stamp duty to be paid at Rs.1,50,990/-.

8. Adverted to above for the subsequent Exchange Deed to restore the property to its original position for the parties, the registration fee and the stamp duty have been already paid under Doc.No.5339/2019 at the Office of the Sub Registrar, Pammal, Chennai the fourth respondent herein and it is inappropriate and illegal on the part of the third respondent to demand stamp duty and registration fee for cancelling the deed of the previous Exchange Deed.

9. The Counter Affidavit was filed by the fourth respondent and the learned Government Advocate appearing for the respondents submitted that under a Deed of Exchange registered as Doc.No.7831/2014, the petitioner has conveyed 412 sq.ft., out of 824 sq.ft., to one B.Kalpesh and the said B.Kalpesh conveyed 719 sq.ft., out of 1438 sq.ft., to the petitioner and by this exchange, the petitioner became entitled to 1131 sq.ft. Thus, the transaction has completed in all respect by taking over the possession by both of them. He further submitted that subsequent to the said Exchange Deed, Patta has been given to the petitioner for his 1131 sq.ft., as Survey No.41/47A and Patta has been given to the said B.Kalpesh for his 1131 sq.ft., as Survey No.41/47B and thus the said Exchange Deed No.7831/2014 has been acted upon and given effect.

10. Subsequent to the above Exchange Deed, the petitioner and B.Kalpesh have executed Deed of Cancellation on 02.05.2019 cancelling the Exchange Deed No.7831/2014 and the same was presented for registration on 02.05.2019. When the said Cancellation Deed was examined, it was noted that the petitioner and B.Kalpesh have mentioned that the Exchange Deed has not came into force and could not be given effect to. As the property exchanged

have already been taken possession by the respective parties and the Patta has already been issued based on the Exchange Deed, the declaration of the petitioner and B.Kalpesh that the Exchange Deed did not come into force is not correct and the document was kept pending Doc.No.P89/2019. Hence, on examination of the said Cancellation Deed dated 02.05.2019, it appeared to the fourth respondent that the Cancellation Deed is in effect an Exchange Deed and it is not duly stamped. Accordingly, the fourth respondent impounded the Cancellation Deed under Section 33 of the Indian Stamp Act, 1899 and forwarded the same to the third respondent for adjudication as to proper stamp duty under Section 40 of the Indian Stamp Act, 1899 as he is the Collector.

11. Learned Government Advocate would further submit that the stamp duty shall not be levied on the title the parties chosen to the document. Further, Article 17 of the Indian Stamp Act, 1899, can be applied only if not otherwise provided. Hence, when a re-exchange of an earlier exchange is made by writing it as a Cancellation Deed, it is not cancellation but otherwise provided in the Schedule. Hence, the stamp duty cannot be levied on the nomenclature of the document.

12. Learned Government Advocate appearing for the respondents further

submitted that the properties exchanged in Doc.No.7831/2014 and Doc.No.5339/2019 are not one and the same. If the parties have been obviously put in original position under the Deed of Cancellation as contended by the petitioner, there is absolutely no necessity for the parties to make fresh exchange in Doc.No.5339/2019. As the property exchanged under Doc.No.7831/2014 and Doc.No.5339/2019 are different, a new exchange is expedient. Accordingly, a fresh Exchange Deed has been registered vide Doc.No.5339/2019. The third respondent has passed the impugned order holding that the Deed of Cancellation dated 02.05.2019 cancelling the Exchange Deed vide Doc.No.7831/2014 is chargeable to stamp duty under Schedule I to Article 31 of the Indian Stamp Act, 1899, after carefully considering the provisions of the Act and the earlier decisions of the first respondent being the Chief Controlling Revenue Authority. The third respondent is the authority under Section 40 of the Indian Stamp Act, 1899, to adjudicate the document received under Section 38(2) of the Indian Stamp Act, 1899 from the fourth respondent. Further, the third respondent is also a Collector appointed by the Government under the powers conferred in Section 2(9) of the Indian Stamp Act, 1899. Hence, the third respondent is the Collector and the competent authority to adjudicate the stamp duty.

13. It is further submitted that according to Article 17 of the Indian Stamp Act, 1899, duty can be levied as a cancellation only when not otherwise provided. When a Cancellation Deed is made, the properties are reverted to the parties as made under the Exchange Deed, which is nothing but a fresh Exchange Deed. The stamp duty cannot be levied on the title of a document alone chosen by the parties. Hence, the contention of the petitioner that the third respondent has no power to levy stamp duty more than Rs.50/- which is provided under Article 17 is untenable.

14. Learned Government Advocate further submitted that it is clearly mentioned in the impugned proceedings that a revision lies with the first respondent under Section 56(1) of the Indian Stamp Act, 1899. When an alternative remedy is provided in the statute itself, the petitioner cannot invoke writ jurisdiction of this Court.

15. Heard both sides and perused the materials available on record.

16. In the case on hand, the Deed of Exchange which was executed between the petitioner and B.Kalpesh vide Doc.No.7831/2014 was sought to be cancelled by Deed of Cancellation dated 02.05.2019. Thereafter, another fresh

Deed of Exchange was executed between the petitioner and B.Kalpesh vide Doc.No.5339/2019 on the file of the fourth respondent herein.

17. The Cancellation Deed is of the year 2019 i.e., 02.05.2019 and the same was presented before the Sub-Registrar, Pammal, Chennai the fourth respondent herein and the same was kept as pending Doc.No.P89/2019/Pammal. Thereafter, a subsequent Exchange Deed came into existence on 01.07.2019 vide Doc.No.5339/2019, registered in the Office of the fourth respondent and the Exchange Deed was also registered so that the parties will be put to previous position.

18. **The stamp duty for the subsequent Exchange Deed vide Doc.No.5339/2019 is for a sum of Rs.2,25,110/-, which was collected from the petitioner by the respondents. It is pertinent to extract, Schedule I, Article 17 of the Indian Stamp Act, 1899 for better appreciation and understanding:-**

> **"Schedule I – Stamp Duty on Instruments**
> **Article 17 – Cancellation-**
> **Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for."**

According to the above provision, the proper stamp duty is only a sum of

Rs.50/-.

19. In the Counter Affidavit filed by the fourth respondent, it is stated that the revision lies with the first respondent under Section 56(1) of the Indian Stamp Act, 1899 and the petitioner has to approach the first respondent by way of revision and this Court is not inclined to accept the above contention and to relegate the petitioner to approach the first respondent after five years of filing the writ petition in the year 2020 challenging the impugned order dated 15.11.2019.

20. **In view of the above factual matrix of the case, this Court is of the considered view that the impugned order dated 15.11.2019 in Na.Ka.No.4882/Aa1/2019 is liable to be quashed and the same is hereby quashed**.

21. The fourth respondent is directed to complete the registration of the Exchange Cancellation Deed dated 02.05.2019 without insisting for any additional stamp duty and deliver forthwith to the petitioner within a period of 8 weeks from the date of receipt of a copy of this order.

22. In the result, this Writ Petition is allowed with the above observations and directions. No costs. Connected Writ Miscellaneous Petition is closed.

02.08.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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Santhome High Road, Chennai.

2.The Deputy Inspector General of Registration,
Guindy, Chennai – 32.

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J.SATHYA NARAYANA PRASAD, J.

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